

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:05-CR-18

v.

HON. JANET T. NEFF

JIMMY SMITH,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Defendant Jimmy Smith has filed a motion for modification or reduction of sentence (Dkt 374) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission. The U.S. Probation Department has filed a Report of Eligibility (Dkt 377) and Defendant has filed a Response (Dkt 383).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

Having fully considered the Report of Eligibility (Dkt 377) and Defendant's response (Dkt 383), the Court has determined that the defendant is ineligible for a reduction of sentence according to the policy statements of the U.S. Sentencing Commission because the guideline range at

sentencing was determined based on the defendant's status as a career offender. Counsel for defendant preserves this issue for future consideration should the law change. Defendant's request for appointment of counsel to pursue his potential challenge under *Johnson v. United States*, 576 U.S. \_\_\_, 135 S. Ct. 2551; 192 L.Ed. 2d 569 (2015) is not properly made in the context of this Amendment 782 proceeding.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (Dkt 374) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

IT IS FURTHER ORDERED that Defendant's request for appointment of counsel for purposes of a challenge to sentencing under *Johnson* is DENIED WITHOUT PREJUDICE.

DATED: November 30, 2015

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge